IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

WP(C).No. 24151 of 2007(A)

PETITIONERS:
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1. JOY JOSEPH, AGED 37 YEARS, S/O. JOSEPH,
THOTTAKKARA HOUSE, KOOVAPPADY P.O.,
ERNAKULAM DISTRICT.

2. SHIJO CHAKKAPPAN,
PALLICKA HOUSE, EAST CHERANELLOOR P.O.,
ERNAKULAM DISTRICT.

3. SOJI VARGHESE,
THEKKANATH HOUSE, KODANAD P.O.,
ERNAKULAM DISTRICT.

4. SHIJO JOSEPH,
THOTTAKARA HOUSE, EAST CHERANELLOOR P.O.,
ERNAKULAM DISTRICT.

5. BIJOY KORUTH,
ATTUPPURAM HOUSE, CHERANELLOOR P.O.,
KOOVAPPADY, ERNAKULAM DISTRICT.

BY ADV. SRI.JOBI JOSE KONDODY

RESPONDENT:

GEOLOGIST,
MINING AND GEOLOGY DISTRICT OFFICE,
CIVIL STATION, KAKKANAD P.O., ERNAKULAM DISTRICT.

BY GOVERNMENT PLEADER SRI.M.R.SABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/11/2007,THE COURT ON 21/11/2007 DELIVERED THE FOLLOWING:

WPC NO.24151/07

APPENDIX

PETITIONERS EXHIBITS

EXT.P1: TRUE COPY OF THE ORDER ISSUED BY THE RESPONDENT REJECTING 1ST PETITIONERS APPLICATION DT.31.5.07.

EXT.P2: TRUE COPY OF THE JUDGMENT DATED 4.7.07 IN WP(C) NO.17187/2007 OF THIS HON'BLE COURT.

EXT.P3: TRUE COPY OF THE ORDERS DATED 13.7.07 AND 19.7.07 REFUSING DEALERS LICENSE OF PETITIONERS 1 TO 3 AND 5.

EXT.P4: TRUE COPY OF THE ORDER DT.6.6.07 ISSUED BY THE RESPONDENT TOONE MR.SOJAN PAUL.

EXT.P5: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 27.7.07 UNDER THE RIGHT TO INFORMATION ACT.

EXT.P6: TRUE COPY OF THE APPLICATION SUBMITTED BY THE 1ST PETITIONER DATED 24.7.07 FOR OBTAINING COPY OF DEALERS LICENSE UNDER THE RIGHT TO INFORMATION ACT.

EXT.P7: TRUE COPY OF THE ORDER DATED 31.5.07 ISSUED BY THE RESPONDENT TO THE 4TH PETITIONER.

EXT.P8: TRUE COPY OF THE ORDER DATED 2.8.07 ISSUED BY THE RESPONDENT TO THE 4TH PETITIONER.

EXT.P9: TRUE COPY OF THE POSTAL COVER IN WHICH EXT.P8 IS SENT TO THE 4TH PETITIONER BY THE RESPONDENT.

EXT.P10: TRUE COPY OF THE JUDGMENT DATED 5.10.2006 IN WPC NO.24644 OF 2006.

EXT.P11: TRUE COPY OF THE CIRCULAR ISSUED BY THE LAND REVENUE COMMISSIONER DATED 6.10.2006.

EXT.P12: TRUE COPY OF THE DEALERS LICENCE ISSUED TO MR.SOJAN PAUL DT.23.7.07.

EXT.P13: TRUE COPY OF THE JUDGMENT DATED 13.6.07 IN WPC NO.17465 OF 2007 OF THIS HON'BLE COURT.

//TRUE COPY//

ANTONY DOMINIC, J.

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W.P.(C) No. 24151 OF 2007 A
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Dated this the 21st day of November, 2007

J U D G M E N T

Petitioners seek to quash Ext.P3 and to direct the respondent to grant dealers licence to them for the stocking and selling of sand under Rule 48(C) of the Kerala Minor Mineral Concession Rules, 1967.

2. The facts of the case are that the petitioners had applied for obtaining dealers licence for stocking and selling of ordinary sand which was rejected and Ext.P1 is the order that is issued by the respondent to the first petitioner. Ext.P1 and similar orders were challenged before this court in WP(C) No.17187/07 and that case was disposed of by Ext.P2 judgment directing that the application made by the petitioners shall be considered in accordance with law as it then stood and that appropriate orders shall be passed thereon. Pursuant to the judgment of this court, the respondent considered the

applications and rejected the same by Ext.P3 series of orders stating that it was not possible to grant additional licences. It is in this background that the writ petition has been filed challenging Ext.P3 and for directing that licence shall be granted to the petitioners.

3. The only contention that was urged before me at the time when the writ petition was heard is that another person whose application was also rejected on the same reasoning as contained in Ext.P1, was subsequently granted licence by Ext.P12. Petitioners submit that they have been discriminated and according to them the only reason for denying licence to them is that they had approached this court by filing the writ petition which resulted in Ext.P2 judgment.

4. In the counter affidavit filed, the respondent has justified the denial of licence to the petitioners and also grant of Ext.P12 licence. Justifying Ext.P3 series of orders, it is stated by the respondent that Koovappady Grama Panchayat has been permitted to mine 76 truck loads of sand per day and that the adjacent Okkal Panchayat has been permitted to mine 116 truck

loads of sand per day, and that these local bodies have been permitted to mine, stock and sell sand from the respective kadavus. It is also stated that royalty is being realised from these local bodies as per the provisions of the Kerala Minor and Mineral Concession Rules, 1967. According to the respondent, the application made by the petitioners were rejected on the ground that already the Panchayats are engaged in sand mining activities including selling and as the availability of the mineral is limited and the demand high, it was decided not to grant any additional licence.

5. Grant of licence and the number of licence to be granted are essentially policy matters for the respondent to decide. Certainly, the availability of the mineral and its demand in the market are relevant considerations. On an assessment of valid considerations, if a bonafide decision has been taken by the respondent to restrict the number of licence, or not to grant any additional licence, such a decision cannot be successfully challenged. In this case, the respondent has explained that it is the local bodies which have been granted licence and it is taking

into account the limited availability of the mineral and its demand that such a decision has been taken.

6. In my view, the petitioners have not succeeded in bringing out any circumstances warranting an interference with the impugned decision. Although petitioners have vaguely made an allegation that it is on account of their approaching this court on an earlier occasion that they were denied licence, I am not satisfied that the petitioners could establish the said plea. Even otherwise, I have on merits found that the reasons contained in Ext.P3 are valid.

7. What remains is the plea of discrimination. Petitioners contend that one Sri.Sojan Paul, had applied for licence and though his application was rejected by Ext.P3, assigning reasons similar to what is mentioned in Ext.P1 issued to the petitioners, the plea of discrimination is set up on the basis that subsequently Sri.Sojan Paul has been granted licence vide Ext.P12. According to the petitioners, if Sri.Sojan Paul could be granted licence, there is no reason why a different approach should be adopted in their case alone.

8. The case of the respondent as stated in para 4 of the counter affidavit is that while the petitioners had applied for licence for areas adjacent to Okkal and Koovappady, the licence granted to Sri.Sojan Paul is in respect of Vazhakkala Village. It is stated that Sri.Sojan Paul had initially held a licence and on an application made, that was allowed to be shifted and relocated in a new place which was also inspected by the respondent, who had granted approval for the same.

9. In view of the fact that the location with reference to which licence has been sought for by the petitioner and what has been granted to Sri.Sojan Paul, petitioners cannot successfully say that their licence application should also be assessed on the same standards. It goes without saying that it is the requirement of licence in a particular area which is relevant. One cannot have a uniform policy for the issuance of licence throughout the state or throughout the district. In one location, additional licence may be required and in an another location, additional licence may not be required. Therefore, essentially it depends upon the assessment of the requirement of licence. In that process, if the

respondent had found that the licence should be granted, there is nothing wrong in that. Therefore it is not possible for me to come to a conclusion that the case of Sri.Sojan Paul and that of the petitioners stand on a similar footing to conclude that the petitioners have made out a case of discrimination.

9. For these reasons, I do not find any merit in the contentions raised in the writ petition.

Writ petition fails and is dismissed.

ANTONY DOMINIC
JUDGE

Rp.